Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Equal Access and Interconnection	)	CC Docket No. 94-54
Obligations Pertaining to	)	RM-8012
Commercial Mobile Radio Services	)	

TO: The Commission

REPLY COMMENTS OF NEW PAR

New Par, by its attorneys, hereby submits its Reply in connection with the Commission's *Notice of Proposed Rule Making and Notice of Inquiry* ("NPRM") in the above-captioned proceeding.[1] Specifically, this Reply addresses the comments filed discussing "switch-based" resale and resale obligations of CMRS competitors.

The NPRM sought comment on, among other things, "whether to require CMRS providers to offer interconnection to resellers of CMRS in order to provide for switch-based resale of CMRS."[2] New Par submits that requiring such interconnection will result in increased costs to the consumer through duplication

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1 By Order of the Acting Chief of the Common Carrier Bureau, released August 11, 1994, reply comments are due October 13, 1994.

2 NPRM at ¶ 5.

of facilities, is technically prohibitive, and will disserve the public interest. Moreover, mandatory CMRS-to-CMRS interconnection will not result in significant benefits for cellular service subscribers or for cellular service providers, including resellers. Indeed, mandatory CMRS-to-CMRS interconnection will require the Commission to micro-manage individual interconnection arrangements.

I. THE NATIONAL CELLULAR RESELLERS ASSOCIATION'S SUGGESTION THAT THE COMMISSION CAN ORDER CMRS INTERCONNECTION IMMEDIATELY IS INCORRECT

The Communications Act, as amended, does not mandate CMRS-to-CMRS interconnection. The National Cellular Resellers Association ("NCRA") wrongly contends that Section 332(c)(1)(B) of the Communications Act mandates CMRS-to-CMRS interconnection and that the Commission's authority to regulate CMRS interconnection should not be limited by its statutory authority to regulate physical interconnection generally, as contained in Section 201(a). Instead, NCRA argues that the Commission is without discretion in ordering CMRS-to-CMRS interconnection and suggests that the Commission convert the Notice of Inquiry to an NPRM or adopt rules requiring such interconnection on reconsideration in GN Docket No. 93-252. In the interim, NCRA

proposes that the Commission issue a Public Notice requiring such interconnection until final rules are adopted.[3]

As a threshold matter, the Communications Act requires only that the Commission order CMRS physical connections "[u]pon reasonable request of any person providing commercial mobile service . . . pursuant to the provision of Section 201 of this Act."[4] It does not require mandatory CMRS-to-CMRS interconnection nor interconnection of "switch-based" resellers. Despite this clear language, however, NCRA contends that Section 332(c)(1)(B) should not be read to incorporate Section 201 because to do so would render Section 332(c)(1)(B) superfluous. This, NCRA argues, would be contrary to traditional principles of statutory construction.[5]

Congress's adoption of two similar provisions, however, was not a meaningless gesture. On the contrary, Congress unambiguously stated its explicit intention that the Commission apply the same principles to the physical connections among mobile service carriers under Title III that had applied to physical connections to landline networks under Title II. In other words, Congress went

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3 See NCRA Comments at 6-7.

4 See 47 U.S.C. § 332(c)(1)(B).

5 See NCRA Comments at 8-9.

out of its way clearly to define the manner in which the Commission should address CMRS interconnection. It is a twist of logic for NCRA to rely upon inapplicable principles of statutory construction when Congress so clearly articulated its intentions. Here, the plain meaning of the statute's provisions must govern.[6]

Thus, Section 201 sets forth the standard pursuant to which the Commission will order physical interconnection.[7] Section 201 and Section 332 work in unison to give the Commission authority to order CMRS-to-CMRS interconnection after providing interested persons an opportunity to be heard and upon finding the public interest would be served. They do not require such interconnection, nor remove from the Commission discretion to determine whether the public interest would be served.

Moreover, the Commission cannot convert the NOI into a NPRM nor issue a Public Notice adopting interim rules as suggested by NCRA.[8] Indeed,

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6 See, e.g., Ardestani v. I.N.S., 112 S. Ct. 515 (1991) (legislative history could not overcome strong presumption that "plain language" of the statute is expressed by the ordinary meaning of the words used).

7 Under Section 201 the Commission will order interconnection only "after opportunity for hearing" and upon finding that such interconnection serves the public interest.

8 NCRA Comments at 5-7.

the Commission has concluded that the record is "inadequate to decide whether to adopt generic rules requiring CMRS providers to provide interstate interconnection to other mobile services providers."[9] Thus, either action would be arbitrary and capricious due to lack of support by a factual record.[10]

II. INTERCONNECTION ARRANGEMENTS BETWEEN CMRS PROVIDERS, INCLUDING SWITCH-BASED RESELLERS, SHOULD BE LEFT TO MARKET FORCES

NCRA's suggestion that Commission-mandated, switch-based interconnection will benefit end users and foster competition for cellular services is unfounded. New Par agrees with McCaw and other commenters that the NCRA engineering proposal is oversimplified and fails to take into account the operational problems, inefficiencies, and added costs that switch-based interconnection will create.[11] Further, NCRA's assertion that switch-based resale will also encourage entry of more CMRS resellers is unsupported, conclusory, and ignores the high

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9 NPRM at ¶ 121.

10 Moreover, the Administrative Procedures Act and the Commission's own rules require significantly more -- i.e., notice and comment -- than adoption of NCRA's proposed public notice. See 5 U.S.C. § 553(b), 47 C.F.R. 1.412.

11 McCaw Comments at 15; Comcast Comments at 18.

costs associated with duplicating the cellular carrier's switch.[12] Seen for what it is, NCRA's request is little more than a request for the Commission to order cellular carriers to provide resellers with preferential unbundled rates.[13]

The costs associated with these services, and others, are currently incorporated into the rates charged to resellers and other cellular customers. These costs will continue, and may increase, even if resellers are permitted to interconnect directly using their own switches. Thus, the cost to end users may actually increase due to the high cost and inefficiencies of duplicating services.

As a preliminary matter, it is impractical and highly inefficient for resellers to duplicate the switching functions of the cellular carrier. Even if a reseller installs its own switch, trunk groups and T-1 lines, the cellular carrier will still have to perform most of the same functions that it currently performs. Specifically, the cellular carrier will have to maintain duplicate customer databases to identify reseller customers, verify users, validate roaming, and to pass calls to the reseller switch when making land-to-mobile or mobile-to-land connections for the reseller.

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12 See NCRA Comments at 13.

13 See BellSouth Comments at 19; Comcast Comments at 18; McCaw Comments at 17.

Further, when a reseller customer makes a mobile-to-mobile call, the facilities-based carrier will be required to route the call through its switch to the reseller's switch for billing purposes and back to the carrier's switch for call completion. This additional transmission, which will be routed through the inferior switching equipment of the switch-based reseller, may degrade the quality of -- and increase the cost of providing -- the service without any corresponding benefit to the end user.

In addition, mandatory interconnection to reseller switches will potentially impede network and technology upgrades. From time to time, New Par and other facilities-based carriers see fit to replace their existing facilities with new facilities produced by different vendors. These replacement facilities will not necessarily be compatible, and will not necessarily operate efficiently with reseller switches. Thus, mandatory interconnection could severely preclude facilities-based licensees from choosing freely among cellular equipment and software they are considering installing. Further, New Par may not be able to implement at all or as quickly, new communications technologies and associated equipment, such as digital service and other intelligent network services, if these choices are incompatible with the resellers' switching equipment. Therefore, as it urged in its original comments in this proceeding, New Par recommends that the Commission refrain from imposing involuntary interconnection requirements on

an already competitive CMRS marketplace and allow market forces to determine the terms and conditions of any CMRS interconnection.

III. ANY RESALE OBLIGATIONS IMPOSED ON CMRS COMPETITORS SHOULD BE OF LIMITED DURATION

New Par agrees with those commenters suggesting that resale obligations should be imposed uniformly on all CMRS providers.[14] Further, New Par supports limiting the obligation of facilities-based CMRS licensees to permit resale of their services by other facilities-based CMRS carriers to a term of 12 months. The Commission has recognized that unrestricted resale of facilities-based competitors provides a strong disincentive to system build-out and true competition.[15]

Further, allowing unrestricted resale by competitors creates uncertainty in the planning process for new facilities. Cellular carriers generally plan their future system capacity requirements at least two to three years in advance. Unrestricted resale makes it difficult to accurately do such long-range planning. The cellular carrier will not know what the capacity needs of its resale competitor will be because the reseller may overestimate or underestimate its

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[14] See McCaw Comments at 21; CTIA Comments at 35; American Personal Communications Comments at 7-8.

[15] See, e.g., Cellular Resale Policies, 7 FCC Rcd. 4006, 4007 (1992).

capacity needs, thereby leaving the cellular carrier with excess or severely limited capacity and the attendant costs. Similarly, the reseller could achieve significant capacity and then transfer all its subscribers to its own system when built. By placing a limit on the time in which facilities-based competitors are obligated to resell their services, carriers will be better able to monitor their own system growth and to budget over the long term for increased system capacity.

Accordingly, New Par recommends that the Commission adopt a 12-month limit with respect to the resale obligations of CMRS licensees vis-a-vis other CMRS facilities-based licensees. The 12-month period coincides with the initial construction period of most competitive CMRS services and thus, will facilitate competitor entry into the market during its initial construction period.[16] Nevertheless, by limiting the resale right to 12 months it will encourage competitors to build out their systems to compete in the market.[17]

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[16] See Third Report and Order, GN Docket No. 93-252 (1994) (adoption of rules requiring Part 90 permittees to construct initial facilities within 12 months of award of permit to conform with Part 22 construction period).

[17] If the Commission finds the 12-month build-out period is too short, New Par would agree with McCaw that the limit should be set at a time no longer than 18 months. See McCaw Comments at 22 n.56.

CONCLUSION

For the foregoing reasons, New Par opposes adopting regulations imposing CMRS-to-CMRS interconnection generally and cellular interconnection for switch-based resellers specifically. New Par recommends that the Commission allow market forces to dictate the interconnection of such entities pursuant to the just, reasonable and non-discrimination standards of the Communications Act. In addition, New Par supports limiting to 12 months the resale obligation of facilities-based CMRS competitors.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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